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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 654

ADAM FARKAS,
PETITIONER,

v.

TEXAS INSTRUMENTS, INC. and
LING-TEMCO-VOUGHT, INC.,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-entitled cause on March 31, 1967.

Preamble

The total facts and circumstances in this case show "a denial of fundamental fairness, shocking to the universal sense of justice". According to Professor Mark Howe of Harvard Law School, each day thousands of citizens

throughout the United States experience the mistreatment described herein. This account features original documentation signed by leading State and Federal Officers who had power to prevent these events and refused to do so.

Opinions Below

1. The Judgment of the U. S. District Court in Dallas, Texas dismissed all complaints for lack of federal jurisdiction.

JUDGMENT OF FEBRUARY 23, 1966.

2. The U. S. District Court in Dallas, Texas denied the Motion for Rehearing. (see Transcript pg. 17)

COURT ORDER OF MARCH 29, 1966.

3. The Decision of the U. S. Court of Appeals for the Fifth Circuit dismissed the Appeal on its merit. The opinion is reported at 375 F.2d 629.

DECISION OF MARCH 31, 1967.

4. The U. S. Court of Appeals denied the Petition for Rehearing of this Case.

COURT ORDER OF MAY 1, 1967.

5. The United States Supreme Court granted 60 days' extension within which Petitioner may file the Petition for Writ of Certiorari. U. S. Supreme Court Order of June 16, 1967.

Jurisdiction

Jurisdiction of the United States Supreme Court is invoked pursuant to Title 28 U. S. C. Section 1254.

Constitutional Provisions and Statutes Involved

This Appeal is based upon: 1) The 1st, 5th and First Section of the Fourteenth Amendment of the United States

Constitution, and Federal Statutes Title 28 U. S. C. 1331 and Title 42 U. S. C. 1985-1986 and also Title 28 U. S. C. 1343, and Rule 19(b) of the U. S. Supreme Court.

Questions Presented

1. *The Right to Work*

Is the right to work for an honest living—without malicious interference caused by the concerted actions of former employer with State or Federal Officers—secured to all citizens within the meaning of the Bill of Rights in the U. S. Constitution?

2. *Fair Hearing — Falsifications of U. S. Government Records*

Do detrimental Government decisions against a person based upon false and prejudicial evidence which did prevent a fair Government hearing, constitute a deprivation of such person's right to DUE PROCESS OF LAW in violation of the 5th Amendment of the U. S. Constitution?

3. *Conspiracy — State Action*

Is there State action in such CONSPIRACY where a leading State Officer (MAYOR OF DALLAS, TEXAS) serves as Chairman of the "private" Corporation whose conduct is said to violate the 14th Amendment of the U. S. Constitution?

4. *Error in Federal Judiciary Procedure*

Since arguments on the merits of this case were not heard by any Court, does the U. S. Court of Appeals (5th Cir.) make an error

a) in denying Petitioner's request for hearing arguments on the merits of this case,
b) and thus dismissing this case on its merits?

Statement of the Case

In June of 1962 Petitioner—Adam Farkas—was hired by Respondent, Texas Instruments, Inc., as an electronic design engineer in Dallas, Texas. During the following 7 months Petitioner received two merit pay raises with excellent recommendations for his professional achievements.

About the first of the year in 1963 Petitioner was assigned to another department of the Corporation. In the new department employees and agents of Texas Instruments, Inc., made obscene remarks and humiliating jokes which referred to the fact that Petitioner is a naturalized citizen of the United States. The new supervisor also introduced Petitioner's national origin into unfounded accusations while he threatened to throw Petitioner out of work.

On May 16, 1963 Company Officers falsified the Corporate records so as to give vindictive statements about Petitioner's personal character and professional ability. (Exhibits 1, and 2)

Invoking U. S. Constitutional principles Petitioner appealed for a hearing to the Corporate Board of Directors. The appeal was answered with a threatening letter from the Corporate attorney. Texas Instruments, Inc., threatened additional reprisals in the event Petitioner sought help outside of the Corporation. As for Constitutional principles the matter was defined in an earlier Memorandum. Pat Haggerty, the president of Texas Instruments, Inc., made it clear that he has no use for American "fundamental freedoms" in the functions of his organization. (see Memo of May 2, 1963 signed by Pat Haggerty)

The facts recited here are not unprecedented. Anyone interested in Blacklistings, expropriation of property values and unlawful jailing should read the case of *James P. Donovan* v. *The City of Dallas*—Mr. Justice Hugo L. Black delivered the opinion of the U. S. Supreme Court. (377 U.S. 408)

Faced with imminent oppression Petitioner called on the Federal Government for help. At this point, Corporate Officers initiated severe punitive actions against Petitioner, by furnishing false and damaging information about him to other persons, and organizations. Thus, Texas Instruments, Inc., BLACKLISTED the Petitioner because of a complaint about abusive treatment during employment.

In July of 1963, U. S. Navy Officer—Joe Morris Landtroop—was detailed under orders of his Commanding Officer to investigate this case for The President's Committee on Equal Employment Opportunity. Claims of one citizen against a BILLION DOLLAR A YEAR ORGANIZATION AND GOVERNMENT CONTRACTOR undergo callous handling in The Presidential Committee of this day and age. In a wrongful abuse of his official powers Navy Officer Landtroop purposefully falsified the U. S. Navy reports and intentionally submitted false information on this case to Federal Agencies. Documents seized by the District Attorney in Dallas, Texas should reveal the reasons which motivated Navy Officer Landtroop to falsify U. S. Government reports. For further help to Texas Instruments, Inc., The President's Committee simply ignored Petitioner's merit pay raises as the Committee ruled:

> "(Petitioner) did not achieve the standards set by the Company in the quality of (his) work and rate of progress". (EXHIBITS 3, 4, 5)

This and other evidence shows that *government hearings do not meet any standard of impartiality.* To be sure,

The President's Committee does not possess the technical knowledge needed to judge the "quality of work" performed by electronic design engineers. The Committee's jurisdiction is limited to questions on discrimination because of race, color, creed and national origin.

Armed with the decision of The President's Committee, Texas Instruments, Inc., and the Director of Federal Contracts turned Petitioner into a public example to deter other persons from complaining about violations of Federal laws. Texas Instruments, Inc., conspired with several individuals and organizations—including Ling-Temco-Vought, Inc.— and in furtherance of the conspiracy enforced a nationwide economic boycott (BLACKLIST) to prevent Petitioner from obtaining work throughout the United States. Once and for all, Petitioner was excluded from every possible work for a living within the City limits of Dallas, Texas. The same BLACKLIST circulated at the State Employment Commission, also forced the State of Texas to refuse Petitioner's application for work. (EXHIBIT 2)

Next, Petitioner and his family were subjected to unlawful Police pressures, intimidation and harrassment with the support of Dallas Mayor, Erik Jonsson, who is also Chairman of the Board of Texas Instruments, Inc. Corporate Officers denounced Petitioner to the Police on false charges of possible violence and mental insanity. (Appendix B)

Sworn testimony of Dallas Police Officer Elmo Cunningham discloses that:

(a) Persons who are not permitted to work for a living in the community are charged with suspicion of "violence" and food robbery during Christmas Holidays.

(b) Denounciations about possible "violence" based upon Petitioner's mental insanity was followed by

Police action in agreement with Texas Instruments, Inc.

Since the president of the Corporation clarified that he has no use for American "principles of fundamental freedom" within the function of his organization, Corporate Officers draw free conclusions upon Constitutional Rights in the United States. Thus Dallas Mayor Erik Jonsson and his Company enforced more drastic *punitive actions* against Petitioner in order to forestall "dangers of violence" created by what they consider "mental insanity" which causes any person to seek justice in Federal Court. Petitioner does not apologize for having submitted written statements in the Court of the United States. (Appendix C)

It is not yet clear how the Dallas Mayor and the Police determined that foregoing arguments at law are symptoms of mental insanity which endanger the safety of his Excellency the President Lyndon B. Johnson. In any event, Chief U. S. District Judge in Dallas, Texas (Joe E. Estes) flatly repudiated the Opinions of the United States Supreme Court as he granted MOTIONS and CLAIMS asserting: "the right of employment and to redress when invaded is exclusively within the domain of the State. It is not a federal civil right".* So, Petitioner suffered more hard punishment reaching the state of total oppression: DEPRIVATION OF REPRESENTATION BY COUNSEL.

Texas Instruments, Inc., resorted to unlawful denounciations by setting up false Police records. Evidence shows that Petitioner was placed under unlawful Police pressures on "suspicion" of violence against the President of the United States. All Courts of Law recognize the deprivation of any person's right to a fair hearing as Total Oppression. Mr. Justice Fortas of the U. S. Supreme Court affirms: "The Aid of Counsel Is Indispensable to a Fair Hearing". (Case of *Clarence E. Giddeon* v. *H. G. Cochran*) "(Peti-

tioner) has seen many Dallas Lawyers and none of these has seen fit to represent (him)''.* Major Dallas law firms suddenly developed mysterious conflicts of interest which did not permit any of them to take this case against Texas Instruments, Inc. Individual attorneys quoted prohibitive retainer fees. One can picture the situation where a person who is forcibly deprived of all work and income and must pay $50,000.00 for legal services EXHIBITS 6, 7, and 8 are splendid examples in the futility of opposing false police records without representation by competent counsel. "Free legal advice" on so called charitable basis unfolds the moral oppression. The president of the Dallas Bar Association does not object to unlawful Police pressures and to vindictive BLACKLISTINGS. Instead he belittles the Courts in the statement of his opinion: ''monetary relief is the only kind of relief that a Court can furnish".*

Any morally motivated person would consider such crude statement derogatory to the Administration of Justice when it is expressed by "an Attorney and therefore officer of the Court".*

It appeared that Petitioner and his family shall be rapidly crushed under the combined powers of Texas Instruments, Inc., and Federal Agencies named herein. The pace of BLACKLISTING mounted steadily.

November of 1964 marks the turning point in this sequence of human degradation. Documentary evidence discovered at the Ling-Temco-Vought Company in Dallas, Texas became A CLASSIC IN THE HISTORY OF ORGANIZED BLACKLISTINGS. So, Attorney James P. Donovan agreed to look into this case. (EXHIBITS 9, 10, and 11)

Letters of U. S. Labor Secretary W. Willard Wirtz effectively conceal the facts known to Government Officers. Labor Secretary Wirtz found "no injustice" of course (EXHIBIT 12)

Since the recent admission reveals that government decisions are based upon false and prejudicial information, Petitioner submitted the new evidence to The President's Committee on Equal Employment Opportunity.

By this time Navy Officer Joe M. Landtroop knew that Texas Instruments, Inc., and Ling-Temco-Vought, Inc., conspired to prevent Petitioner from obtaining work for a living. Abusing his official powers for the second time Navy Officer Landtroop again helped to falsify the Government records with the full knowledge of the conspiracy and with the view of aiding it.

Once again, the Office of U. S. Labor Secretary Wirtz turned the new hearing into a show of force featuring the pauper citizen against an influential BILLION DOLLAR A YEAR ORGANIZATION. After many months of delay this grotesque show was finally released in an official decision signed by the Director of Federal Contracts. (EXHIBIT 13)

The malice in the second decision of The President's Committee highlights the handling of this case by the Department of Labor. Director of Federal Contracts, Ward McCreedy, does not see any discrimination in the vindictive BLACKLIST to deprive Petitioner from working for a living. Ward McCreedy also devised new false accusations in a fabricated story about "office morale". (EXHIBIT 13)

It remains a fact that Government decisions against Petitioner are based upon false and prejudicial evidence introduced into the Hearings. Thus Texas Instruments, Inc., and U. S. Navy Officer J. M. Landtroop violated the 5th Amendment of the Constitution by purposefully furnishing false reports to Federal agencies which deprived Petitioner of his right to a Fair Government Hearing (Due Process of Law).

Summary of Argument

I. In spite of the existing Federal Statutes which protect the rights of citizens to employment—including work for a living—the U. S. District Court in Dallas, Texas maintains that employment is not a federal right. Chief U. S. District Judge (Joe E. Estes) dismissed this case in order to conform with the U. S. Court of Appeals (5th Cir.) which holds that:

> "The right of employment, and to redress when invaded is exclusively within the domain of the State. It is not a federal civil right". *Ferrer* v. *Fronton Exhibition Co.* (5th Cir. 1951) 188 F.2d 954 *(passim)*

Ferrer v. *Fronton Exhibition Co.* should be overruled. Acts of Congress and applicable U. S. Supreme Court opinion (on pages 13, A-13, A-14, A-15 herein) require that Federal Courts recognize the right to Employment (work) as Federal Right.

II. With reference to Conspiracy the Court of Appeals (5th Cir.) has found that:

a) "Appellant's federal claim is neither immaterial to the relief sought nor in our judgment wholly unsubstantial". (see page 8 of Judgment)

b) "Appellant does allege that Defendants furnished false information to local and federal authorities . . . and that they caused local law enforcement officers to subject him to unwarranted and unreasonable surveillance and interrogation". (see page 8 of Judgment)

c) Appellate and District Court records show that a leading State Officer (Mayor of Dallas, Texas) is Chairman of the Corporation which subjected

Petitioner to "unwarranted", "unreasonable" and therefore unlawful "Police pressures", intimidation and harassment, etc.

The Court of Appeals (5th Cir.) makes a serious error in deciding that these claims "nowhere contain essential allegation of State action". Because, the U. S. Supreme Court recognizes

> *"State action, whenever the State has so far insinuated itself into a position of interdependence with the otherwise private person whose conduct is said to violate the Fourteenth Amendment". U. S. v. Price,* 383 U.S. 787.

One can hardly picture a more intimate "position of interdependence" between State and "private" Corporation than having the Mayor of Dallas, Texas as Chairman of the Board in the corporation.

III. The Court of Appeals (5th Cir.) summarily ignores all claims about U. S. Government decisions which are based upon the willful falsifications and intentional furnishing of false reports to federal authorities.

The decision of the Court of Appeals (5th Cir.) should be overruled. Because, false reports which serve as basis for Government decisions against a person, deprive such person of the Right to a Fair Government Hearing (Due Process) in violation of the 5th Amendment of the U. S. Constitution.

IV. The merits of this case were not argued in any Court as Chief U. S. District Judge (Joe E. Estes) refused to grant jurisdiction. "For it is well settled" that

U. S. Courts should not judge the merits of a case which do not come under Federal jurisdiction. (see *Bell* v. *Hood*, 327 U.S. 678.)

Nevertheless, the Court of Appeals (5th Cir.) dismissed this case on its merits and "has so far departed from the accepted course of judiciary proceedings" as to deny the Petition for Hearing any argument on the merits of the case.

Thus, Petitioner was also deprived of the basic fairness in judiciary proceedings protected by the 5th Amendment of the Federal Constitution.

In "the usual and accepted course of judiciary proceedings" [required by U. S. Supreme Court Rule 19(b)] Federal Courts should hear the applicable arguments before judging the merits of the case.

ARGUMENT

I. The Constitution of the United States requires that no person shall be deprived of the right to life and liberty without due process of law. This certainly includes the right to work for a living without malicious interference by State or Federal Officers.

The Court of Appeals (5th Cir.) relegated the right to work for a living to the remote area of non-discrimination provisions in the Government contracts. Long before any such provisions existed the People who founded this country as a nation under law established the Constitution of the United States to insure "the Blessings of liberty to ourselves and to our posterity". Speaking through Mr. Chief Justice Warren the U. S. Supreme Court repeatedly affirms:

> *"Liberty under law extends to the full range of conduct which the individual is free to pursue and it*

cannot be restricted except for proper governmental objective'' (*Bolling* v. *Sharpe,* 347 US 497).

Falsifications of U. S. Navy reports which help Texas Instruments, Inc., to prevent Petitioner from obtaining work for a living cannot serve any "proper governmental objective". For "liberty under law" certainly includes the right to work for an honest living without malicious interference of State or Federal Officers. This is firmly and precisely established by the following consistent line of U. S. Supreme Court opinions:

Barsky v. *N. Y. Board of Regents,* 347 US 442; *Cummings* v. *Missouri,* (US) 4 Wall 277; *Ex Parte Garland,* (US) 4 Wall 333; *Takahashi* v. *Fish and Game Comm.,* 334 US 410; *Truax* v. *Reich,* 239 US 33; *Yick Wo* v. *Hopkins,* 118 US 356.

Under Constitutional Law the United States Supreme Court has protected the right to employment (work) of medical doctor, minister, lawyer, off-shore fisherman, cook and laundry operators. The complaint in the present case alleges that:

"Defendant, Texas Instruments, Inc., conspired with other persons, firms and Corporations—Ling-Temco-Vought, Inc.—to prevent Plaintiff from obtaining any employment whatsoever and was successful in so preventing him.'' (*Complaint on page 95 of the record*)

Thus, the decision rendered by the Court of Appeals (5th Cir.) should be overruled, because it refuses to recognize Petitioner's right to employment (work) protected by the same Constitutional Law which forms the basis of U. S. Supreme Court opinions in the above cited cases.

II. The Fifth Amendment is violated by Government decisions based upon purposeful falsifications in U. S. Navy reports which deprive a person of the required fair Government Hearing (Due Process of Law).

Among other offenses the complaint does allege that:

> "Defendant was furnishing false information to the local and federal authorities, including ... (U. S. Navy) Commander J. M. Landtroop, who were sent to investigate" (*Complaint on page 107 of the Record*)

False information contained in U. S. Navy reports does not meet the standards of impartiality for fair government hearings. The U. S. Supreme Court repeatedly specifies:

> *"Under the 5th Amendment the hearing required must be a fair one before a tribunal which meets at least currently prevailing standards of impartiality". Wong Yang Sung* v. *McGrath*, 339 US 33.

Thus, the Court of Appeals (5th Cir.) also refuses to recognize Petitioner's right to DUE PROCESS OF LAW (5th Amendment) by ignoring the obvious consequence that Government decisions are based upon false and prejudicial evidence which deprived Petitioner of the required fair Government Hearing (Due Process).

III. The Fourteenth Amendment protects the individual against State action. Accordingly, the United States Supreme Court recognizes the act of any "private person" as State action when such person is a willful participant in joint activity with the State or its agents.

"We turn now to the claimed conspiracy", the complaint alleges that:

"Defendant knowingly, intentionally and unlawfully combined with other persons, firms and corporations to deprive the Plaintiff of the equal protection of the laws and equal privileges and immunities under the laws and his rights as citizen of the United States by preventing the Plaintiff from obtaining employment and causing the Plaintiff to be pressured, threatened, harassed and intimidated by local law enforcement officers, all under color of State law and authority. (*Complaint on page 108 of the Record*)

The Court of Appeals (5th Cir.) incorrectly decided that the above claim:

"nowhere contains the essential allegation of State Action" . . . (because) defendants, both private corporations caused these actions to be taken" (*see page A-8 of the attached Judgment*)

To be sure, the fault here lies not in the claim, but in the Appeal Court's view that Federal Conspiracy statutes require that each offender be a State official or that he act in an official capacity.

Speaking through Mr. Justice Fortas, the United States Supreme Court makes it crystal clear that:

1. *"Private persons jointly engaged with State Officials in the prohibited action are acting 'under color' of law for purposes of the (federal conspiracy) statute." United States* v. *Price,* 383 U.S. 787.

2. *"To act 'under color' of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents". United States* v. *Price,* 383 U.S. 787.

The conspiracy alleged in Court shows that the "private corporation" willfully participates with a leading State Officer in the prohibited action. Therefore one should recall those U. S. Supreme Court opinions which re-affirm that:

> *"There is 'state action' whenever the State has so far insinuated itself into a position of interdependence (with the otherwise private person whose conduct is said to violate the Fourteenth Amendment)". United States* v. *Price,* 383 U.S. 787; *also Burton* v. *Willmington Parking Authority,* 365 U.S. 715.

In the present case, the Court of Appeals (5th Cir.) chose to ignore the intimate "position of interdependence" between the State and "private" Corporation such as having the Mayor of Dallas, Texas as Chairman of the Corporation.

Moreover, the Court of Appeals (5th Cir.) set a wholly incorrect threshold level for 'State action' amounting to violation of the Equal Protection Clause in Federal Conspiracy Statutes. As minimum requirement for conspiracies under Title 42 USCA Sections 1985 and 1986 the Circuit Court of Appeals would grant relief:

> "If State officers conspire with private individuals in such a way as to defeat or prejudice a litigant's rights in a State Court, that would amount to a denial of the Equal Protection of the Laws." *(Judgment on pages A-8 and A-9)*

The requirement set by the Circuit Court of Appeals makes a dangerous attempt to defeat recent U. S. Supreme Court opinions in: *Bell* v. *Maryland,* 378 US 226; *Monroe* v. *Pape,* 365 US 167; *United States* v. *Guest,* 383 U.S. 745.

Speaking through Mr. Justice Stewart the U. S. Supreme Court recognizes:

> *"State action of a nature sufficient to create rights under the Equal Protection Clause even though the participation of the State was peripheral, or its action was only one of the several co-operative forces leading to the constitutional violation". United States* v. *Guest,* 383 U.S. 745.

The complaint does allege that:

> "Defendant furnished false information to local and federal authorities . . . causing Plaintiff to be pressured, threatened, harassed and intimidated by local law enforcement officers, etc." (*Complaint on page 108 of the Record*)

For correct conclusion in the language of the United States Supreme Court the above stated:

> *"allegation is broad enough to cover a charge of active connivance by agents of the State in the making of the 'false* information' *or other conduct amounting to official* abuse of power, Police pressures, harassment, intimidation, etc., *clearly sufficient to constitute denial of rights protected by the Equal Protection Clause" United States* v. *Guest,* 383 U.S. 745.

IV. "Usual and Accepted Course of Judiciary Proceedings" specified in U. S. Supreme Court Rule 19(b), requires Federal Courts to hear arguments on the merits before judging the merits of a case.

At first, the District Court in Dallas, Texas dismissed this case for want of Federal jurisdiction. Accordingly, all subsequent arguments have been limited to jurisdic-

tional questions. A lack of basic fairness in judiciary proceedings prompted the dismissal of this case for:

> "Allegations of conspiracy, then, do not state a cause of action upon which relief can be granted" *(Judgment on page A-9)*

Because, the decision to dismiss "for failure to state a cause of action upon which relief can be granted" goes to the merits of the case and not to the question of jurisdiction. (See U. S. Supreme Court Majority Opinion in *Bell* v. *Hood*, 327 U.S. 678).

With reference to the merits the Court of Appeals (5th Cir.) acknowledged that:

> "(Petitioner's federal claim is neither immaterial to the relief sought nor wholly insubstantial". *(Judgment on page A-8)*

Instead of granting such "relief" the Court of Appeals dismissed the claim on its merits and "so far departed from the usual and accepted course of judiciary proceedings" as to refuse to hear any argument on the merits of this case. It is common knowledge that a discussion on the merits opens a debate about the involvement and *"active connivance by agents of the State in the making of false reports or other conduct amounting to official"* abuse of power such as:

1. Purposeful falsification of U. S. Navy records;
2. "Blackball tactics";
3. Unlawful police pressures, threats, harassment and intimidations.

The Court of Appeals (5th Cir.) would not permit any such discussion. Thus, petitioner was ruthlessly deprived of the Procedural Due Process of Law protected by the 5th

Amendment of the Federal Constitution. This case was dismissed for lack of merits without a hearing of argument on the merits of the claim.

The practical effect upon persons who are deprived of Constitutional rights by acts done in furtherance of conspiracies with State or Federal officers.

First. The Court of Appeals attempts to defeat the threshold level, defined by the U. S. Supreme Court, for the violation of the Equal Protection Clause in Federal Conspiracy Laws. *(Argument III on pages 16-17 herein)*

Second. A precedent was established for the dismissal of future cases where: "The Federal Claim is neither immaterial to the relief sought, nor insubstantial", as the Court of Appeals (5th Cir.) does not permit any argument on the merits of such claim before dismissing the whole case on its merits. This precedent perpetuates a lack of basic fairness in judiciary proceedings which "has no support whatsoever in a procedural system supposed to work as far as humanly possible to the end of obtaining equal and exact justice." (Mr. Justice Black's statement on Federal Procedure, Fed. Rep. 2nd Ser., March 1966.)

Third. Petitioner is no exception. Each day thousands of persons throughout the United States are deprived of Constitutional rights in the manner described herein.

Should the law be allowed to treat other persons in the way petitioner was treated?

Petitioner is asking for counsel to be appointed by the Court.

On appeal from error in a lower Court decision, it is pointed out that:

> "The United States Supreme Court must protect those who come before it from unconstitutional deprivation of their rights." (See Headnote in *Barsky* v. *N. Y. Board of Regents,* Lawyers Edition, page 832, 98 L.ed.)

The deprivation of Petitioner's basic Constitutional right to Procedural Due Process of Law (Argument IV.) by the Circuit Court of Appeals is the inevitable consequence of his inability to secure counsel to represent him.

This case therefore confirms the conclusion of Mr. Justice Fortas holding that:

> "Assistance of counsel is necessary to 'due process' and to a fair trial." (*Gideon* v. *Cochran, Jr.,* 371 U.S. 715.)

Petitioner is a pauper, and unable to pay many tens of thousands of dollars in the fees requested for legal representation. Insofar as:

> "The right of counsel, for the poor as well as the rich, is an indispensable safeguard of freedom and justice under law." (Conclusion of Mr. Justice Fortas in the brief *Gideon* v. *Cochran, Jr.,* 371 U.S. 715.)

Petitioner respectfully appeals to the United States Supreme Court for a competent counsel to be appointed in order to represent him on this appeal.

Respectfully submitted,
ADAM FARKAS
Pro Se

Appendix A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23699
ADAM FARKAS,
APPELLANT,
versus
TEXAS INSTRUMENT, INC. and LING-TEMCO-VOUGHT, INC.,
APPELLEES.

Appeal from the United States District Court for the Northern District of Texas.

(March 31, 1967.)

Before TUTTLE, Chief Judge, AINSWORTH and DYER, Circuit Judges.

TUTTLE, Chief Judge: Appellant, a naturalized citizen of the United States, is a native of Romania. He was employed as an engineer by the defendant Texas Instrument, Inc. from June, 1962 until his discharge in May, 1963. The complaint asserts that the defendants, Texas Instrument, Inc., and Ling-Temco-Vought, Inc., were prime contractors operating under federal government contracts containing certain provisions, required to be included therein by an Executive Order issued by the President, which forbade the defendants from discriminating against any employee or applicant for employment in connection with the performance of their contracts on the basis, inter alia, of national origin. In substance, appellant claims that his dis-

charge from Texas Instrument was motivated by discrimination based upon his national origin, that Ling-Temco-Vought refused to hire him for the same reason, and that the two defendants engaged in a conspiracy to prevent him from securing employment by the use of certain methods described as "blackball" tactics.

Appellant asserts jurisdiction under 28 U.S.C.A. § 1331, the federal question statute, and 28 U.S.C.A. § 1343, providing for jurisdiction of "any civil action authorized by law to be commenced by any person . . . because of the deprivation of any right or privilege of a citizen of the United States by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42 . . . ." The trial judge dismissed the complaint for failure to state a claim within the jurisdiction of the district court. We agree that the complaint must be dismissed, but not for want of jurisdiction.

I

We consider first the claims of discriminatory discharge and refusal to hire.

A. On March 6, 1961, President John F. Kennedy issued Executive Order No. 10925, the pertinent portion of which required all government contracting agencies to include in every government contract the following provision:

> Section 301.
>
> . . .
>
> In connection with the performance of work under this contract, the contractor agrees as follows:
>
> (1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. . .

Appellant alleges that the defendants have entered into certain government contracts containing the above-quoted provision, and that they have breached that condition of their agreements by discharging and refusing to employ him because of his national origin. Claiming a federal right as a third-party beneficiary under those contracts, he seeks to maintain this action to recover damages which he claims to have suffered by reason of defendants' nonperformance.

Bell v. *Hood*, 327 U.S. 678 (1946), teaches that where the complaint is so drawn as to seek recovery directly under the Constitution or laws of the United States, a federal court must entertain the suit, unless the federal claim is immaterial and made solely for the purpose of obtaining jurisdiction, or wholly insubstantial or frivolous.

> The reason for this is that the court must assume jurisdiction to decide whether the allegations state a cause of action on which the court can grant relief as well as to determine issues of fact arising in the controversy.
>
> Jurisdiction, therefore, is not defeated as respondents seem to contend, by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover. For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction. Whether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact, it must be decided after and not before the court has assumed jurisdiction over the controversy. If the court does later exercise its jurisdiction to determine that the allegations in the complaint do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jurisdiction. *Id.* at 682.

The claim attempted to be asserted here is based upon a right claimed to be conferred by an Executive Order. That Order, in turn, is to be accorded the force and effect given to a statute enacted by Congress.[1] The alleged federal claim is neither immaterial to the relief sought, nor insubstantial. Clearly, then, the complaint "is so drawn as to seek recovery directly under the Constitution or laws of the United States." Accordingly, the district court had jurisdiction under 28 U.S.C.A. § 1331 to decide whether or not the allegations in the complaint state a ground for relief. *Bell* v. *Hood, supra.*

B. This brings us to the question whether a private civil action is a permissible method of enforcing the anti-discrimination provisions of Executive Order No. 10925. This question was considered in *Farmer* v. *Philadelphia Electric Co.*, 329 F.2d 3 (3rd Cir. 1964). Excerpts from that court's analysis of the question are set out in the margin.[2]

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[1] Congress has committed to the President broad authority to prescribe such policies and directions, not inconsistent with the provisions of this chapter (Chapter 10 of Title 40, which deals with the procurement, utilization and management of Government property) . . . . (and) Chapter 4 of Title 41 (which concerns the procurement of property and services for the government by uniform procedures) . . . as he shall deem necessary to effectuate the provisions of said chapters . . . ." 40 U.S.C.A. § 486(a). We would be hesitant to say that the antidiscrimination provisions of Executive Order No. 10925 are so unrelated to the establishment of "an economical and efficient system for . . . the procurement and supply" of property and services, 40 U.S.C.A. § 471, that the order should be treated as issued without statutory authority. Indeed, appellees make no such challenge to its validity. We, therefore, conclude that Executive Order No. 10925 was issued pursuant to statutory authority, and has the force and effect of law. *Accord,* Farmer v. Philadelphia Electric Co., 329 F. 2d 3 (3rd Cir. 1964).

[2] The history of the executive orders on the subject from 1951 to the present all point to the conclusion that the enforcement of the nondiscrimination provisions in Government contracts has been entrusted to one or more of the Governmental agencies with the assistance of a committee appointed by the President. The only provisions of any order mentioning court proceedings are para-

We agree with the conclusion there reached that:

> The history of the orders, the rules and regulations made pursuant to them, and the actual practice in the enforcement of the nondiscrimination privisions are all strong persuasive evidence . . . that the threat of a private civil action was not contemplated by the orders. *Id* at 9.

Were there an absence of any remedy save that which

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graphs (b) and (c) of § 312 dealing with sanctions and penalties in executive order 10925. These paragraphs provide that the contracting agency or the Committee recommend to the Department of Justice that appropriate proceedings "within the limitations of applicable law" be brought against noncomplying contractors and that criminal proceedings be brought against those furnishing false information to a contracting agency or to the Committee. Paragraph (f) of § 312 of the Order states:

> "(f) Under rules and regulations prescribed by the committee, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this order *by methods of conference, conciliation, mediation, and persuasion* before proceedings shall be instituted under paragraph (b) of this section, or before a contract shall be terminated in whole or in part under paragraph (d) of this section for failure of a contractor or subcontractor to comply with the contract provisions of this order."

Section 307 of this Order in pertinent part provides:

> "Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations and orders of the Committee with respect to contracts entered into by such agency * * *. All contracting agencies shall comply with the Committee's rules in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this Executive order and of the rules, regulations and orders of the Committee pursuant hereto. * * They are further directed to appoint or designate * * * compliance officers. It shall be the duty of such officers to seek compliance with the objectives of this order *by conference, conciliation, mediation, or persuasion.*"

The regulations of the President's Committee on Equal Employment Opportunity, issued under Executive Order 10925, 26 F.R. 6585 (July 1961), 41 CFR, § 60-1.24(b)(2), state in part:

> "If the investigation (made by the contracting agency) indicates the existence of an apparent violation of the non-

might be fashioned under the general jurisdiction of the federal courts, the inference would be strong that that jurisdiction was intended to be invoked to give validity to the contractual assurances of nondiscrimination given pursuant to the Order. But this is not the case. The path was open to apellant under the Order to lay his complaint before the President's Committee on Equal Employment Opportunity. 41 C.F.R. §§ 60.1.20-27. He alleges that he has availed himself of this opportunity, but that the Committee refused him relief. In light of the Order's emphasis on administrative methods of obtaining compliance with the required contractual provisions, and its narrowly limited reference to judicial enforcement thereof, we conclude that that refusal is final. See *Switchmen's Union* v. *National Mediation Board*, 320 U.S. 297 (1943). Accordingly, the claims predicated upon breach of contractual nondiscrimination provisions must be dismissed on the merits for

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discrimination provisions, the matter should be resolved by informal means whenever possible."

When informal means are unsuccessful, 41 CFR, § 60-1.24(b)(3) provides that the appropriate sanction or penalty may be imposed. However, the intention of the Committee to maintain control over the imposition of such sanctions and penalties is shown by the provision that:

> "The contracting agency shall not impose any sanction or penalty under Section 312 of the Order, except under subsection (d) of that section relating to contract termination, without prior approval of the Committee * *."

Further, § 60-1.29 of 41 CFR provides that no case shall be referred to the Department of Justice for legal action without ten days' notice to the contractor "affording him an opportunity to comply with the provisions of the Order * * *", and that

> "In addition, the contracting agency shall make reasonable efforts to persuade the contractor to comply with the Order and to take such corrective action as may be appropriate."

As far as we have been able to ascertain, the Department of Justice has not instituted any proceeding in any court against any noncomplying contractor to enforce the nondiscrimination provisions of a Government contract.

Farmer v. Philadelphia Electric Co., 329 F.2d 3, 8-9 (3rd Cir. 1964) at 8-9.

failure to state a cause of action upon which relief can be granted.[3]

II

We turn now to the claimed conspiracy. The complaint alleges that "at various times subsequent to his discharge by Defendant Texas Instrument, Inc., said Defendant knowingly, intentionally and unlawfully combined with other persons, firms and corporations to deprive the Plaintiff of the equal protection of the laws and of equal privileges and immunities under the laws and his rights as a citizen of the United States by preventing the Plaintiff from obtaining and securing employment, and in causing the Plaintiff to be pressured, threatened, harassed and intimidated by local law enforcement officers who were caused to follow the Plaintiff about and subject him to unreasonable and unwarranted surveillance and interrogation, all under the color of state law and authority, and injuring the Plaintiff in person and property for lawfully attempting to enforce his rights to the equal protection of the laws." Appellant's contention is that by these actions, the defendants have violated 42 U.S.C. §§ 1985(2) and (3).

Original jurisdiction over actions brought to recover damages resulting from such violations is committed to the district courts by 28 U.S.C. § 1343. Clearly, appellant has *attempted* to state a right based on Sections 1343 and

[3] With the passage of the Civil Rights Act of 1964, discrimination with regard to hire or tenure of employment based upon race, color, religion, sex or national origin by any employer engaged in an industry affecting commerce was made an unlawful employment practice. Sec. 701(a)(1), 42 U.S.C.A. § 2000-2(a)(1). Under the Act, initial responsibility for the elimination of such practices is committed to the Equal Employment Opportunity Commission. However, if the Commission is unable to obtain voluntary compliance with the provisions of the Act within a brief period after a charge is filed with it (30 days in most cases), any person claiming to be aggrieved by the unlawful employment practice may institute a civil action for enforcement in the United States District Court. Sec. 706(e), 42 U.S.C.A. § 2000-5(e).

1985. His federal claim is neither immaterial to the relief sought nor, in our judgment, wholly insubstantial. Thus, under *Bell* v. *Hood, supra,* the district court had jurisdiction to determine the question whether the allegations of conspiracy in appellant's complaint stated a federally-granted cause of action. *Congress of Racial Equality* v. *Clemmons,* 323 F.2d 54 (5th Cir. 1963).

On the merits, the difficulty with appellant's claim is that it nowhere contains the essential allegations of state action. As we said in *Clemmons, supra,* "It is still the law that the Fourteenth Amendment and the statutes enacted pursuant to it, including 42 U.S.C.A., § 1985, apply only where there is state action." *Id.* at 62.

Appellant does allege that the defendants furnished false information to local and federal authorities (including the federal officer sent to investigate the complaint filed by appellant pursuant to Executive Order No. 10925), and that they caused local law enforcement officers to "subject him to unwarranted and unreasonable surveillance and interrogation."

In one sense, of course, these allegations do show involvement by officials "acting under color of state law." But these alleged activities are not the sort of "state action" with which § 1985 is concerned. Appellant alleges that local law enforcement officers were *caused* to subject him to unreasonable and unwarranted surveillance and interrogation, but he does not allege that the persons responsible for this alleged invasion of his rights were acting under color of state law. In fact, he alleges that the defendants, both private corporations, caused these actions to be taken. As we said in *Dinwiddie* v. *Brown,* 230 F.2d 465 (5th Cir. 1956):

> "This is not to deny that if state officers conspire with private individuals in such a way as to defeat

or prejudice a litigant's rights in state court, that would amount to a denial of equal protection of the laws by persons acting under color of state law. *It is another matter, however, where they act wholly within their official responsibilities and do not intentionally cooperate in any fraudulent scheme.* In such a case, the tort is solely that of the private individuals, and redress of the wrong rests with the state courts." *Id.* at 469. (Emphasis added.)

The allegations of conspiracy, then, do not state a cause of action upon which relief can be granted, and the complaint should therefore have been dismissed for that reason.

For the reasons stated, the judgment of dismissal is

AFFIRMED.

Appendix B

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

No. CA. 4-462

ADAM FARKAS
v.
TEXAS INSTRUMENTS, INC. AND
LING-TEMCO-VOUGHT, INC.

ORAL DEPOSITION OF ELMO L. CUNNINGHAM

ELMO L. CUNNINGHAM,
called by the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Craig:

Q. Lt. Cunningham, as I told you earlier, my name is Wallace Craig. I am the attorney representing the Plaintiff, one Adam Farkas, and there are several questions I want to ask you so if at any time you don't understand what I ask you, will you stop me and tell me. A. All right.

Q. And we will get it straightened out. Give me your full name, please, sir. A. Elmo, E L M O, Lavon, Cunningham.

Q. What is your occupation, sir? A. I am a police officer, City of Dallas.

Q. How long have you been so employed? A. A little over 19 years.

Q. What is your present assignment with the Police Department? A. I am a lieutenant in the Forgery Bureau.

Q. And within the last year have you held any other assignments other than in the Forgery Bureau? A. No, sir.

Q. I will ask you if during the course of your work as a police officer with the City of Dallas, you have had occasion to know one Adam Farkas? A. Yes, sir.

Q. Would you tell me when and how Mr. Farkas first came to your attention? A. Some time along the early part of December of 1963, Chief Currey told me that there would be a member of Texas Instruments contact me in regards to a letter that they had received from a discharged employee and that I should, whenever someone from out there called, go out there and see if there was any violation or—

Q. Did you at any time receive a call from someone with Texas Instruments? A. Yes, sir, this was three or four days after this. Now I don't have the dates, unfortunately.

Q. All right. Fine. Do you recall the name of the individual who called you? A. Mr. Floyd Purvis.

Q. All right. Did you subsequently go and talk with Mr. Purvis? A. Yes, sir.

Q. And what was the substance of that conversation as it related to Mr. Farkas? A. He showed me a copy of a letter that Mr. Farkas had written to one of the officials of the company, I believe, after — either after or before he was discharged. I believe it was after he was discharged from the company.

* * *

Q. Was there anything in the letter that constituted a threat of violence? A. Not in my opinion which, of course, is not —

Q. All right. Well, you are, of course, an officer of the

law and have had occasion to delve into this sort of thing for a number of years, have you not? A. Yes, sir.

* * *

Q. Well, now what was said in specifics, if you can now recall, by Mr. Purvis that conveyed to you this feeling, this notion, that he might become violent? A. . . . There were concerned for the fact that this man might become rather despondent or something, with Christmas approaching without — They seemed to feel like that he didn't have any income at that particular time and that he might, in a moment of despondency, do something violent. But there was no indication — they made no indication that he had threatened or in any way made any threat to become violent.

* * *

Q. What did Mr. Purvis ask you to do or what did he want you to do in relation to Mr. Farkas? A. I take it that the main thing he wanted was to alert us in case something did happen out there at the home of any of the officials of the company, that we might be able to get some squads out there or some protection out there a little faster than if it was not.

Q. In other words, is this what he said, in effect? A. Yes, he said he was concerned with the safety of the president, vice-president, and so on, in the company, and if this fellow should do some violence, well, he felt like we should be able to give them some protection.

* * *

Appendix C

Mr. Justice Fortas delivered the opinion of the United States Supreme Court in the case *U. S.* v. *Price,* 16 Led., 2d 267.

According to the Supreme Court of the United States:

> "A conspiracy to interfere with a citizen's free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States a criminal offense, embraces all of the rights and privileges secured to citizens by all of the Constitution and all of the laws of the United States." (Headnote 17 *U. S.* v. *Price,* 16 Led. 2d 267)

Since, the Complaint alleges interference by means of a conspiracy to prevent this Plaintiff from obtaining work (employment) therefore, Federal Court has jurisdiction to try this case. The right to work is secured to citizens by Constitutional Law insofar as no citizen can be deprived of work by means of:

a) arbitrary punishment,
b) unjustified interference by third persons,
c) conspiracy with the support of State and Federal Officers, (see Federal Laws *Sections 1985 and1986 in Title 42 U. S. Code*)

The following U. S. Supreme Court decision affirms:

> "punishments . . . consist of exile or banishment by abjuration of the realm of transportation; others in loss of liberty by perpetual or temporary imprisonment . . . others induce a disability of holding offices or employments . . . Disqualifications from the pur-

> suits of lawful avocation, or from positions of trust, etc., has been imposed as punishment".
> (U. S. Supreme Court decision in the case of *Cummings* v. *Missouri*)

The above quotation proves that deprivation of a person's right to work for a living is recognized as punishment in the opinion of the United States Supreme Court.

As to the issue of unjustified interference in the right of employment the U. S. Supreme Court holds:

> "The employee has a manifest interest in the freedom of the employer to exercise his judgment without illegal interference or compulsion and by the weight of authority, the unjustified interference of third persons is actionable although employment is at will."
> (*Truax* v. *Raich*, 60 Led. 131)

Vindictive black-listing to prevent any citizen from working for a livelihood also violates basic Constitutional Law according to the U. S. Supreme Court:

> "It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom."
> (*Cummings* v. *Missouri*, 18 Led. p. 135)

For closing argument Plaintiff quotes here the opinions of Justices Mr. Black and Mr. Douglas of the United States Supreme Court in the case of *Barsky* v. *Board of Regents N. Y.*, 98 Led. 850.

> "The right to work I had assumed was the most precious liberty that man possesses. Man has indeed

as much right to work as he has to live, to be free, to own property . . . 'A man has a right to be employed, to be trusted, to be loved, to be revered.' It does many men little good to stay alive and propertied, if they cannot work. To work means to eat. It also means to live."
(*Barsky* v. *Board of Regents N. Y.*, 98 Led. 850)

The above quoted opinions represent the AMERICAN IDEAL OF FUNDAMENTAL FAIRNESS within the frame of Constitutional Law interpreted by the United States Supreme Court.

Appendix D

STATUTES AND CONSTITUTIONAL PROVISIONS

28 U.S.C.A. § 1331. *Federal question; amount in controversy; costs*

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum of value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

* * *

28 U.S.C.A. § 1343. *Civil rights and elective franchise*

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

* * *

42 U.S.C.A. § 1985. *Conspiracy to interfere with civil rights — Preventing officer from performing duties*

* * *

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. R.S. § 1980.

* * *

42 U.S.C.A. § 1986. *Same; action for neglect to prevent*

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed,

and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued. R.S. § 1981.

* * *

CONSTITUTIONAL PROVISIONS

AMENDMENT 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the

land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 14

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TEXAS INSTRUMENTS
INCORPORATED
SEMICONDUCTOR BUILDING • 13500 NORTH CENTRAL EXPRESSWAY • DALLAS, TEXAS
SEMICONDUCTOR-COMPONENTS DIVISION

May 16, 1963

Mr. Adam Farkas
2118 Morningside Drive
Garland, Texas

Dear Adam:

This is in answer to your request for a written statement regarding your work performance, as discussed with you on May 10 in a meeting with Bob Clifford and myself.

Your work performance over the past several months was considered unsatisfactory on the basis of the lack of results on the switching time and K-factor projects to which you were assigned during your five months in the Germanium Small Signal engineering branch.

> Your performance on switching time test circuits for the CAT machine was such that you were taken off the job before its completion.
>
> Similarly, there was little indication of your successfully completing the assignment to improve the design of K-factor test equipment on which you had been working for the past two months.

This action in your case was taken after only the most careful consideration. We regret that it became necessary and want to wish you the best of success in your future activities.

Sincerely,

Bill Spaller

William C. Spaller
Personnel Director

WCS:dk

C O P Y

A-22
EXHIBIT 2

June 19, 1963

Texas Employment Commission
2206 Main Street
General Claims Office
Dallas 1, Texas

Gentlemen:

Claimant Adam I. Farkas, Social Security No. 128-24-1920

Adam I. Farkas was separated from Texas Instruments on May 10, 1963. He was completely unproductive over the last few months of his employment and caused serious problems in his own area by his behavior toward his supervisors and fellow workers.

Adam I. Farkas was paid through June 30, 1963, plus an additional 8 days of vacation pay.

Very truly yours,

W. D. Coursey
Assistant Vice President
Personnel

ob

THE PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY
WASHINGTON 25, D.C.

NOV 1 1963

File Number:
C-1-3-1921

EXHIBIT 3 A-23

Mr. Adam Farkas
2118 Morningside Drive
Garland, Texas

Dear Mr. Farkas:

This is in reference to your complaint against Texas Instruments, Inc., Dallas, Texas, in which you alleged dismissal due to discrimination because of national origin. Upon receipt of your complaint, we directed that a complete investigation of this matter be made.

As you no doubt know, determining whether or not a person has been discriminated against by an employer can quite often be difficult to decide. In various instances, after a thorough study of the case record and the surrounding circumstances, we have been unable to conclude that the complainant has been discriminated against because of race, creed, color or national origin.

In your particular case a determination has been reached on the basis of those facts which you personally presented to the staff members, and a review of the investigation by the Department of the Navy which discloses that the company hired you into a responsible position with full knowledge of your national origin. It further shows that you did not achieve the standards set by the company both in the quality of your work and your rate of progress.

Based upon the investigation as reported by the Department of the Navy and the review of the case by the staff members, the Committee is unable to conclude that your dismissal by the company was an act of discrimination based upon your national origin.

We appreciate very much your interest in bringing this matter to our attention. Your cooperation and understanding during this investigation and review has been a great assistance to this Committee.

Sincerely yours,

Hobart Taylor, Jr.
Executive Vice Chairman

LAST NAME | FIRST NAME | INITIAL | EMPL. NO. | DIV. | DEPT. | GRADE | AGE RATE | SL/WP | DATE PREPARED | EFFECTIVE DATE

☐ TRANSFER

FROM	TO	ITEM	TO
	01	DIV. OR CO.	
	02	COST CENTER	
	03	DIST. CODE	
	04	ACCOUNT NO.	
	05	STATE	

REG. NO.

☐ PAY CHANGE

	06	TYPE PAY	
	07	BASE RATE	
	08	SL/WP RATE	
	09	JOB CLASS	
	10	JOB GRADE	
	11	REASON	

☐ STRUCTURE

1 TRAINING RATE 4 CODE
2 PROBATIONARY 5 SHIFT
3 PERMANENT

CURRICULUM CODE:

CHANGED TO:

☐ SPECIAL ALLOWANCES

FROM	TO	ITEM	TO
	12	SUPPLEMENT	
	13	S.R. ALLOW.	
	17	LOCATION	
	18	STARTING	

☐ OTHER CHANGE (SEE BELOW)

☐ PERSONAL ☐ EDUCATION (2-3)

CAL. | STATUS | CITIZEN | LEVEL | SCHOOL YEARS | SCHOOL

☐ NAME CHANGE (24)

CHANGE FROM

APPROVALS & DATES

1 Reginald Tyler Richard Hof
2
3
4 PERSONNEL DIRECTOR

FOR EXPLANATION OF CODES SEE PM 2-1-7

☑ NEW EMPLOYEE PROGRESS REVIEW

YOU HAVE COMPLETED THREE MONTHS' SERVICE WITH TEXAS INSTRUMENTS. YOUR PROGRESS AND YOUR APTITUDES HAVE BEEN REVIEWED BY YOUR SUPERVISOR. AS A RESULT OF YOUR PERFORMANCE, YOUR EMPLOYMENT STATUS AND THE DATE IT WILL BECOME EFFECTIVE WILL BE AS INDICATED ABOVE.

	QUALITY OF WORK	QUANTITY OF WORK	JOB KNOWLEDGE	PERSONALITY	ATTITUDE TOWARD JOB	COOPERATION	INTEREST	INDUSTRY
ABOVE STANDARD								
MEETS STANDARD								
BELOW STANDARD								

RECOMMENDATION

☐ CHANGE AS INDICATED ON CHANGE NOTICE ABOVE ☐ NO CHANGE IN STATUS ☐ PLACE ON PROBATION (SEE BELOW)

REASON

☐ UNDERRATED WHEN HIRED ☐ BELOW STANDARD PERFORMANCE ☐ ABOVE STANDARD PERFORMANCE
☐ OVERRATED WHEN HIRED ☐ MEETS STANDARD PERFORMANCE

☐ PROBATION

PLACED ON PROBATION FROM	TO	PROBATION EXTENDED FROM	TO	DATE REMOVED FROM PROBATION

☐ OTHER CHANGE

REASON FOR CHANGE

Adam Parkas has shown such superior job knowledge, interest and industry that the above rating marks were not sufficient to properly describe him. I feel that he was both underrated when hired and is above standard in overall rating.

VISIBLE ID COPY

EXHIBIT 4

A-24

TEXAS INSTRUMENTS
INCORPORATED

13500 NORTH CENTRAL EXPRESSWAY • DALLAS, TEXAS

SEMICONDUCTOR-COMPONENTS DIVISION

December 1, 1962

EXHIBIT 5 A-25

TO: ADAM I FARKAS 3 240 39417

FROM: Cecil P. Dotson

SUBJECT: Your Performance Review

New Rate: 800 Old Rate: 780

Job Classification: 3071 ENGINEER

Job Grade: 26

Twice each year your supervisor carefully reviews your job performance as a part of our program to assure that everyone at TI is paid as fairly as possible for the work he is doing.

As a result of this thorough appraisal of your performance, the above job classification and rate of pay have been approved, effective December 1, 1962.

If you have any questions about your performance review, your job or any other matter of interest to you, I hope you will not hesitate to discuss it with your supervisor. Your performance review interview is a good time to do this.

I would like to take this opportunity to tell you how much I appreciate the fine contributions to the division which you and so many others have made.

Sincerely,

Cecil P. Dotson
Vice President

CPD:dk

P-5

DALLAS BAR ASSOCIATION

ADOLPHUS HOTEL
DALLAS, TEXAS 75202

OFFICERS
HUBERT D. JOHNSON, PRESIDENT
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ED GOSSETT
DELEGATE, AMERICAN BAR ASSOCIATION
JOHN LOUIS SHOOK
DIRECTOR, STATE BAR OF TEXAS

March 16, 1964

EXHIBIT 6

A-26

Mr. Adam Farkas
2118 Morningside Drive
Garland, Texas

Dear Mr. Farkas:

After I talked with you week before last I had occasion to talk with Mr. Dick Jenkins, your attorney. I also asked one of our young men to bring me the executive orders and other matters which would have to be the basis of your claim. I was under the impression that Mr. Jenkins did not think that you could prevail in your claim. From my examination of the authorities brought to me by my assistant, I am of the same opinion.

Even if you could establish beyond question that your discharge was in violation of the applicable executive orders, it is my opinion that this would not be the basis for your obtaining any monetary relief against your former employer. You should keep in mind that monetary relief is the only kind of relief that a court can furnish. So, when I say that you could not get monetary relief, I am also saying that you could not get any relief.

As an officer of the Dallas Bar Association it would not be appropriate for me to attempt to send you to any particular attorney. As a licensed attorney, and therefore an officer of the court, I am not supposed to take a case where I do not think I can win, and I do not feel it appropriate for me to ask some other lawyer to do something that I would not do.

You have been advised by a number of attorneys who are highly competent in such matters. I believe that you would do well to abandon your complaints against the United States Department of Justice and your former employer.

Sincerely yours,

Hubert D. Johnson

HDJ/arm

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS 21

SARAH T. HUGHES
U. S. DISTRICT JUDGE

October 5, 1964

EXHIBIT 7 A-28

Mrs. Adam Farkas
2118 Morningside Drive
Garland, Texas

Dear Mrs. Farkas:

I have received your letter and material concerning your husband's unemployment for the past fifteen months and your desire to present a claim in a Federal Court against persons who may have prevented Mr. Farkas from obtaining employment.

As a Federal Judge, I am not permitted to advise you as to whether you have a legal claim or whether such a claim can be presented in a Federal Court. This is a responsibility placed upon such legal counsel as you may obtain.

If you still do not have legal counsel, you might wish to contact Mr. Sartin of the Dallas Lawyers' Referral Service, RI 7-1453, for his suggestions. There is no way to present your case in court without filing the necessary complaint to initiate proceedings. To do this, you should rely upon counsel.

I am sorry that I have neither jurisdiction nor authority to assist you and can make no other suggestions.

Very truly yours,

Sarah T. Hughes

U. S. District Judge

DALLAS BAR ASSOCIATION
LAWYER REFERRAL SERVICE
426 FIDELITY BUILDING
1000 MAIN STREET
DALLAS 2, TEXAS

Riverside 7-1453

SARTIN
ctor

May 4, 1965

Mr. A.I. Farkas,
Dallas, Texas.

Dear Sir: In re: Texas Instrument Inc. case

As you know I have referred your legal problems to several Dallas attorneys and regret that none of these have seen fit to represent you.

It appears that you too have seen many Dallas lawyers and have been unable secure their services.

I regretthat my list of panel attorneys has been exhausted.

Yours truly,

Lawyer Referral Service
By B.D. Sartin, Director

BDS:S

A-29
EXHIBIT 8

DONOVAN & WOOD
ATTORNEYS AND COUNSELORS AT LAW
30½ HIGHLAND PARK VILLAGE
DALLAS, TEXAS

JAMES P. DONOVAN
JOHN W. WOOD

March 2, 1965

LA 8-7737

EXHIBIT 9 A-30

Mr. Adam Farkas
1216 West Miller Road
Apartment 219
Garland, Texas

Re: Texas Instruments Incorporated

Dear Mr. Farkas:

This will confirm the action taken by me, in your behalf, relative to your termination by the referenced corporation.

On or about the 1st day of November, 1964, you consulted with me, concerning the termination of your employment, by Texas Instruments on May 10, 1963. At that time you had been out of work for almost eighteen months, appeared to be in a highly nervous and depressed state of mind. You related to me the facts and events leading to your termination, and the action you had taken to obtain fair treatment in your employment and your termination. You furnished me with copies of all correspondence between you and the Company, together with evidence of your futile efforts to obtain employment during the eighteen months period. You attributed your failure to obtain employment primarily to the letter of May 16, 1963, written to you by William C. Spaller, Personnel Director for Texas Instruments, and to that Corporation's responses to inquiries from prospective employers.

Following our conference, I wrote to the General Counsel for the Corporation, on November 3, 1964, pointing out to him the falsity of statements incorporated in your employment record, furnished to the Government and to prospective employers, and the resultant inability of your obtaining employment. I requested a correction of your record to reflect the true reason for your discharge and other pertinent facts. Mr. Bryan F. Smith responded to my letter by a telephone call, assuring me that he would examine your record personally and arrange a conference with me upon completion of his examination. That conference was held and sub-

sequent thereto and under date of December 11, 1964, Mr. Smith as Vice-President, Secretary and General Counsel of the Corporation delivered to me the letter which you now have in your possession. That letter flatly contradicted Mr. Spaller's letter of May 16, 1963, as to the reason for your discharge, and set out the true facts relating thereto. Prior to the delivery of this letter, I advised Mr. Smith that if the requested letter were forwarded, it would not in any way prevent you from seeking compensation for the damages sustained, as a result of the corporate action.

In a letter dated December 18, 1964, Mr. Smith offered you relocation expenses in exchange for a release of all claims you have against the Corporation. You rejected this offer for the reason that you felt that it was wholly inadequate to compensate you for the losses sustained through your long period of unemployment and consequential damages resulting from the Corporation's circulation of false information concerning your employment and discharge as evidenced by the letter of May 16, 1963.

There is no doubt in my mind that the action of the Corporation taken by its employees in the interim between the letter of May 16, 1963, and December 11, 1964, was wrongful and the direct cause of your unemployment and resultant losses and damages.

Very truly yours,

James P. Donovan

James P. Donovan

JPD/e

TEXAS INSTRUMENTS
INCORPORATED
SEMICONDUCTOR BUILDING • 13500 NORTH CENTRAL EXPRESSWAY • DALLAS, TEXAS
SEMICONDUCTOR-COMPONENTS DIVISION

May 16, 1963

A-32
EXHIBIT 10

Mr. Adam Farkas
2118 Morningside Drive
Garland, Texas

Dear Adam:

This is in answer to your request for a written statement regarding your work performance, as discussed with you on May 10 in a meeting with Bob Clifford and myself.

Your work performance over the past several months was considered unsatisfactory on the basis of the lack of results on the switching time and K-factor projects to which you were assigned during your five months in the Germanium Small Signal engineering branch.

> Your performance on switching time test circuits for the CAT machine was such that you were taken off the job before its completion.
>
> Similarly, there was little indication of your successfully completing the assignment to improve the design of K-factor test equipment on which you had been working for the past two months.

This action in your case was taken after only the most careful consideration. We regret that it became necessary and want to wish you the best of success in your future activities.

Sincerely,

William C. Spaller
Personnel Director

MAILING ADDRESS: POST OFFICE BOX 5012 • DALLAS 22, TEXAS • ADams 5-3111 • CABLE: TEXINS

TEXAS INSTRUMENTS
INCORPORATED
CORPORATE OFFICES: NORTH BUILDING • 13500 NORTH CENTRAL EXPRESSWAY • DALLAS, TEXAS

December 11, 1964

A-33
EXHIBIT 11

To Whom It May Concern:

This verifies that Mr. Adam Farkas was employed by this Company between June 1962 and May 1963.

During his employment as an electronic engineer, his duties included the design of test equipment used for measuring the switching times of fast switching transistors. For his work on this and similar projects and as a part of the Company's regular performance reviews, the Company increased his compensation on two occasions within the first seven months of his employment.

The separation of Mr. Farkas from our Company resulted from events that centered about a personal disagreement with his second supervisor and not as a result of any lack of technical competence or ability.

Sincerely,

Marvin H. Berkeley

Marvin H. Berkeley
Manager, Corporate Personnel

cc

U. S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

JAN 24 1964

A-34
EXHIBIT 12

Honorable Ralph Yarborough
United States Senate
Washington 25, D. C.

Dear Senator Yarborough:

Thank you for your letter of January 16, 1964, concerning the equal employment opportunity complaint of Mr. Adam Farkas against Texas Instruments, Inc.

A full investigation of his case was made by the Department of the Navy which concluded his dismissal was not based on discrimination.

The case was completely reviewed by the President's Committee on Equal Employment Opportunity, which considered the full investigation record of the Navy Department in addition to facts Mr. Farkas presented to staff members of the Committee. The Committee was unable to conclude that Mr. Farkas' dismissal from Texas Instruments was due to discrimination based on his national origin.

After independent review of the entire case record, I am satisfied that Mr. Farkas' dismissal did not result from discrimination and that no injustice has been done.

Thank you for your interest in this matter and, as you requested, I am returning his letter.

Sincerely,

W. Willard Wirtz

Secretary of Labor

Enclosure

THE PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY
WASHINGTON, D.C. 20210

MAY 1 1965

Re: Texas Instruments
Dallas, Texas
C-1-3-1921

Mr. Adam Farkas
1216 W. Miller Road
Apartment #219
Garland, Texas

Dear Mr. Farkas:

This is to advise you of the Committee's findings with respect to the additional information you submitted in connection with the above-referenced case.

A review has been made of your entire file, including the information you submitted to the Committee and to the Navy Department since our decision of November 1, 1963. After careful consideration of such information, we find no basis on which to alter the Committee's prior decision that your dismissal by the company was not an act of discrimination based upon your national origin. Further, on the basis of available information, there is no showing that the company, its representatives, or employees otherwise violated the Executive Orders with respect to your treatment during or subsequent to employment with Texas Instruments.

Members of the Committee's staff and Navy personnel have apprised me of the various telephonic conversations expressing your interest in this matter. In this respect, I can readily understand your concern about at least two developments since the decision of November 1, 1963, i.e., (1) the company's letter of December 11, 1964, indicating that your dismissal was not due to lack of technical competence or ability, and (2) the company's letter of December 18, 1964, offering you $2,500 contingent upon a release from you as to its further liability. As a matter of clarification, I would like to touch briefly on these two points as they relate to the Committee's action.

The letter of December 11, 1964, addressed "To Whom It May Concern," points out that your separation "resulted from events centered about a personal disagreement" with your second supervisor and "not as a result of any lack of technical competence or ability." Although we are not fully aware of the company's intent in writing the letter, we find no conflict between such statement and the Committee's findings of November 1, 1963, "that you did not achieve the standards set by the company both in the quality of your work and your rate of progress." There has never been any question as to your general technical

A-35
EXHIBIT 13

competence and ability. The company's position at the time of our investigation was that your personal disagreement with supervisory and other officials adversely affected your work performance and progress on two project assignments. It was also shown that your personal disagreements created disharmony and adversely affected office morale. These are the factors which are shown to have formed the basis for the company's action in discharging you on May 10, 1963.

The information you submitted does not offset these findings, or support your charge that the company's reaction to your personal disagreements constituted discrimination on the basis of national origin. The Committee's consideration in this respect included the question of reprisal as well as the basis for dismissal.

The company's letter of December 18, 1964, was addressed to your legal representative at the time, Mr. James P. Donovan. It is apparent from the letter and other available information, that the $2,500 offer concerns the liable-slander action which you brought against the company. Such action seemingly concerns your charge that Texas Instruments was responsible for preventing your securing employment with other companies. I can appreciate your counsel's desire to retain most of the facts pending court adjudication or other settlement. However, on the basis of information you furnished us in this respect, it appears that the company's offer and your legal action concern matters outside of the Committee's jurisdiction. Moreover, in view of the substantial evidence on which the Committee has based its findings, the facts relative to your private legal action would be of little or no use to our files.

I trust the above fully clarifies the Committee's position in this matter. Your cooperation and understanding during this review have been of great assistance to this Committee.

Sincerely yours,

Ward McCreedy
Director of Contract Compliance

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SUPREME COURT, U. S.

FILED
OCT 20 1967
JOHN F. DAVIS, CLERK

No. 654

In the

Supreme Court of the United States

OCTOBER TERM, 1967

ADAM FARKAS,

Petitioner,

v.

TEXAS INSTRUMENTS INCORPORATED and LING-TEMCO-VOUGHT, INC.,

Respondents.

BRIEF IN OPPOSITION FOR RESPONDENT TEXAS INSTRUMENTS INCORPORATED

WILLIAM D. NEARY,
2300 Republic National Bank Building,
Dallas, Texas 75201.

Of Counsel:

RICHARD E. GRAY,
JERRY L. BUCHMEYER,
THOMPSON, KNIGHT, SIMMONS & BULLION,
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P. O. Box 5474,
Dallas, Texas.

WARLICK PRESS, INC.—P. O. BOX 19243—2323 VALDINA STREET—DALLAS—RI 1-2163

No. 654

In the

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OCTOBER TERM, 1967

ADAM FARKAS,

Petitioner,

v.

TEXAS INSTRUMENTS INCORPORATED and
LING-TEMCO-VOUGHT, INC.,

Respondents.

BRIEF IN OPPOSITION FOR RESPONDENT TEXAS INSTRUMENTS INCORPORATED

Statement

Throughout the Petition are supposed "factual" assertions which are erroneous and completely without foundation in the record. These need not be belabored here, however—for the facts of this case are fully and accurately stated in the opinion of the court below, reported at 375 F. 2d 629.

Reasons for Denying the Writ

This case presents nothing worthy of review by this Court. It consists only of the claims of a disgruntled dis-

charged employee . . . claims made with unrestrained invective . . . claims which, despite the emotional verbiage of the Petition, plainly have no consequence beyond the particular facts and the immediate parties to this litigation.

The Petitioner—whom Respondent Texas Instruments hired as an engineer in June of 1962 *with full knowledge* that he was a naturalized citizen and a native of Romania (R. 91; Pet. 4, A-23)—claims that he was discriminatorily discharged because of his national origin in May of 1963 (R. 92-93, 106). Petitioner filed a charge to this effect with the appropriate administrative agency, the President's Committee on Equal Employment Opportunity, 26 Fed. Reg. 1977 (1961) (R. 106, 193; Pet. 5). His claim was first investigated and was then rejected by the Committee on November 1, 1963 (R. 106, 113; Pet. 5, A-33).

Over a year later, the Petitioner renewed his charge of discriminatory discharge with the Committee by there asserting, as he does here, that Respondent Texas Instruments had falsified records and submitted false information concerning his discharge to the Committee (R. 113; Pet. 8-9, A-35). Again, his charges were investigated, and again, on May 11, 1965, the Committee rejected them and found that the Petitioner had not been discharged or discriminated against because of his national origin (Pet. 8-9, A-35).

This suit was then filed in the United States District Court for the Northern District of Texas (R. 20-27). By it Pe-

titioner claimed that Respondent Texas Instruments had discriminatorily discharged him and that Respondent Ling-Temco-Vought had discriminatorily refused to hire him because of his national origin, allegedly in violation of Executive Order No. 10925, 26 Fed. Reg. 1977 (1961) (R. 106-07). In addition, Petitioner claimed the two Respondents had, in violation of 42 U.S.C. §§ 1985(2) and (3), engaged in a twofold "conspiracy": to prevent him from securing employment and to cause local law enforcement officers to subject him to "unreasonable and unwarranted surveillance and interrogation" (R. 105, 107-09).

The court of appeals below held that the Petitioner did not state a cause of action upon which relief could be granted on either basis, either § 1985 or Executive Order No. 10925. (375 F. 2d at 632-35.) This decision is manifestly correct. It is not in conflict with other decisions of this Court or with decisions of other courts of appeal. And, most certainly, it does not involve any unsettled or novel question or any critical issue of federal law which would warrant review by this Court.

There was, for example, nothing novel or momentous about the holding below that state action is required for there to be any violation of the Fourteenth Amendment and the statutes, such as 42 U.S.C. § 1985, enacted pursuant to it (375 F. 2d at 634). "This has been the view of the [Supreme] Court from the beginning. * * * It remains the Court's view today."; *United States v. Guest*, 383 U.S. 745,

755 (1966). An original complaint (R. 20), two amended complaints (R. 91, 105), a proposed pretrial order (R. 190), and three briefs (R. 113, 185, 218) were, among other pleadings, filed on behalf of Petitioner in the trial court.[1] Yet, in none of these is there any allegation that a "state" official or agent of any sort—whether the President's Committee (which rejected Petitioner's initial claim of discriminatory discharge and his renewed claim of falsification of information) or the local police officers (who supposedly were caused to subject him to untoward surveillance and interrogation)— were intentional and willful participants in a conspiracy violative of § 1985. Instead, the only "conspiracy" alleged anywhere in the record is that of the two Respondents, both private corporations (see R. 105-07, 195-97, 200, 210);[2] clearly this is not "state action." See, in addition to

[1] Petitioner's request for counsel (Pet. 20), purportedly based upon Gideon v. Wainwright, 372 U.S. 335 (1963), in this—a civil suit instituted by him for the recovery of $280,000 (R. 112)—requires no response. Respondent notes, without comment, however, that the record demonstrates that Petitioner was represented by no less than three separate attorneys in the trial court (R. 80-83, 215-17, 226-28) and that the exhibits to the Petition show that he was represented by still two other attorneys before suit was filed (Pet. A-26, A-30).

[2] Almost immediately after the court of appeals below denied rehearing, Petitioner filed suit in the United States District Court for the District of Massachusetts against the two Respondents (Texas Instruments, Ling-Temco-Vought), the mayor of Dallas, and the federal employee (a Naval officer) who first investigated Petitioner's charges of discriminatory discharge for the President's Committee on Equal Employment Opportunity. The complaint in that suit (Civil Action No. 67-369-M) consists of the present Petition for Writ of Certiorari and its exhibits, only slightly revised. Added, however, are specific charges that the investigating officer "willfully falsified" his report to the Committee and that the Committee itself acted with malice and itself fabricated grounds for denying Petitioner's claims of discriminatory discharge and of falsification of informatiton. This case is presently pending, with the defendants' motions to dismiss and to quash service having been presented to the court.

the cases cited in the opinion below, *Hanna v. Home Ins. Co.*, 281 F. 2d 298 (5th Cir. 1960), cert. denied, 365 U.S. 838 (1961).

Moreover, review is not even sought of the second holding below—i.e., that no cause of action was stated under Executive Order No. 10925, 26 Fed. Reg. 1977 (1961). This is not stated as a "question presented" by the Petition for Certiorari, nor is Executive Order No. 10925 either cited as a regulation involved or printed in the statutory appendix to the Petition. Rules 23(1)(c) and (d). Notwithstanding this, the decision below was plainly correct: the detailed "sanctions and penalties" specified in Executive Order No. 10925 provide the *exclusive* method of enforcement of its antidiscrimination provisions; very clearly, they do not permit an individual to bring a private suit based upon Executive Order No. 10925 after his claims of discrimination have been rejected (here, twice) by the administrative agency. See *Switchmen's Union v. National Mediation Board*, 320 U.S. 297 (1943).

Furthermore, this decision will have absolutely no impact or consequence upon pending or future suits claiming discrimination in hiring, discharge, etc.: the comprehensive Civil Rights Act of 1964, 42 U.S.C. § 2000e-15 —which became effective after this suit was filed and which, in essence, prohibits discrimination with regard to hire or tenure based upon race, color, religion, sex or national origin by any employer engaged in an industry affecting

commerce—expressly authorizes an aggrieved employee to file suit[3] for enforcement of that Act in the federal district court. Beyond doubt, suits claiming discriminatory discharge, refusal to hire, etc., will be based upon this remedial and inclusive statute—the Civil Rights Act of 1964—and not upon Executive Orders.[4] Thus, the holding of the court below regarding Executive Order No. 10925 (just like its decision regarding 42 U.S.C. § 1985) simply has no significance beyond this particular case and the specific facts and parties here involved.

The Petition, therefore, presents only a private dispute—and a petty squabble at that—stemming from fanciful (and previously rejected) claims of the supposed discriminatory discharge of a single employee. No amount of verbiage, however emotional, can convert such a case into one warranting review by this Court.

---

[3] If, after a brief period—30 days in most cases—the Equal Employment Opportunity Commission is unable to obtain voluntary compliance with the Act, 42 U.S.C.A. § 2000-5(e) (375 F. 2d at 633, fn. 3).

[4] In fact, Executive Order No. 10925 was superseded and the President's Committee on Equal Employment Opportunity was abolished on September 24, 1965 by Executive Order No. 11246. 30 Fed. Reg. 12319, 12935 (1965); 42 U.S.C.A. § 2000e (1966 Supp.). This new Executive Order, which like its predecessor concerns nondiscrimination provisions required in federal government contracts, does not provide that private civil actions may be based upon violations of such provisions (see 375 F. 2d at 632-33). However, employers contracting with the government will no doubt be "engaged in an industry affecting commerce"—and would thus be subject to private suits for enforcement of the comprehensive antidiscrimination provisions of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000-5(e).

Conclusion

For these reasons, as well as those detailed in the opinion below, the petition for a writ of certiorari should be denied.

Respectfully submitted,

WILLIAM D. NEARY,
2300 Republic National Bank Building,
Dallas, Texas 75201.
Attorney for Respondent, Texas Instruments Incorporated.

Of Counsel:

RICHARD E. GRAY,
JERRY L. BUCHMEYER,
THOMPSON, KNIGHT, SIMMONS & BULLION,
2300 Republic National Bank Building,
Dallas, Texas 75201.

WILLIAM J. ROCHE,
P. O. Box 5474,
Dallas, Texas.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the above Reply Brief were served by United States air mail, postage prepaid, upon the Petitioner Adam Farkas, Pro Se, 83 State Street, Bristol, Rhode Island, on this 19th day of October, 1967.

William D. Neary

WILLIAM D. NEARY,
2300 Republic National Bank Building,
Dallas, Texas 75201.
Attorney for Respondent, Texas Instruments Incorporated.

SUPREME COURT, U. S.

FILED
OCT 30 1967
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 654.

ADAM FARKAS,
PETITIONER,

v.

TEXAS INSTRUMENTS, INC. and
LING-TEMCO-VOUGHT, INC.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR PETITIONER

ADAM FARKAS
Pro Se
83 State Street
Bristol, Rhode Island

Blanchard Press, Inc., Boston, Mass. — Law Printers

In the
Supreme Court of the United States

OCTOBER TERM, 1967

No. 654.

ADAM FARKAS,
PETITIONER,

v.

TEXAS INSTRUMENTS, INC. and
LING-TEMCO-VOUGHT, INC.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR PETITIONER

This is an itemized reply to the misleading, immaterial and wholly unfounded statements in the Brief submitted by Respondent, Texas Instruments. Inc.

1. Respondent has urged this Court to deny the Petition because: "This case ... consists only of the claims of a disgruntled discharged employee". (Brief in Opposition pages 1 and 2). Such request by Respondent is

immaterial to the issues presented. The unhappy feelings of the parties to this litigation may not be turned into an issue of law in order to provide grounds for arguments seeking denial of a review by the United States Supreme Court.

2. Respondent states that Petitioner has made "supposed 'factual' assertions which are erroneous and completely without foundation in the record". (Brief in Opposition page 1)

   In reply to such statment, Petitioner points to sworn depositions and EXHIBITS contained in the record and signed by Government and Corporate Officers who provide documentary evidence which shows the Factual basis of the "assertions" made by Petitioner.

   Respondent is attempting to evade the facts. In the entire record there is not one piece of documentary evidence to support any of the claims made by the Respondent.

3. Respondent's contention that "the facts of this case are fully and accurately stated in the opinion of the court below" (Brief in Opposition pg. 1) is wholly unfounded. This case was never tried in Court. The opinion of the Court below is on the merits and not on the facts of this case.

4. Respondent imposed upon this Court with superfluous verbiage wasted on Executive Orders. To be sure, this Petition is not based upon any Executive Order. Thus, the statement about Executive Orders in Respondent's Brief is immaterial to the questions presented in the Petition and "may be disregarded and stricken in conformity with Section 5 of Rule 40 of this Court.

5. In final effort to evade the questions sought for review, Respondent contends that "The Petition presents only a private dispute—stemming from fanciful claims of

supposed discriminatory discharge of a single employee''* (Brief in Opposition pg 6.). It is easy to see that Respondent's contention has no basis in truth or fact.

The present Petition seeks United States Supreme Court review on a Federal Cause of Action which is far beyond the ''discharge of a single employee''.

The Petition seeks United States Supreme Court review on the merits of federal claims for:

a) Falsification of U. S. Navy Reports for the purposeful deprivation of Petitioner's right to Fair Government Hearing (DUE PROCESS OF LAW) in violation of the 5th Amendment of the Federal Constitution.

b) Blacklisting and the enforcement of a nationwide economic boycott to prevent Petitioner from obtaining work in this country.

c) Unlawful police pressures (harrassment, intimidation, etc.) instigated by Respondent Corporation with its Corporate chairman—the Mayor of Dallas, Texas.

6. Above all, Petitioner appeals to the United States Supreme Court for review of the question presented on basic fairness in federal judiciary proceedings (Procedural Due Process):

Since the Judgment carefully specifies that ''Appellant's federal claim is neither immaterial to the relief sought nor wholly insubstantial''—does the

---

*Respondent characterizes the present case as the "fanciful claims of a single employee." It is beyond the scope of this document to show the actual number of persons mistreated by the respondent corporation.

It should be noted, however, that Respondent does not argue with what has been stated in the petition. Instead, Respondent attacks Petitioner's character, describing him as a "disgruntled employee" who uses "emotional verbiage" in "unrestrained invective."

U. S. Court of Appeals make an error in dismissing this case for lack of merits without any oral or written argument on the merits of the claim?

For cases where jurisdiction exists and the claim is not frivolous the argument on the merits of claim is of the very essence of fair judiciary proceedings. This is of paramount importance to each and every person in this country.

Conclusion

For these reasons as well as those stated in the Petition, the Writ sought by Petitioner should be granted.

ADAM FARKAS
Pro Se
83 State Street
Bristol, Rhode Island